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Attorneys for Plaintiff
Subaru of America, Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

SUBARU OF AMERICA, INC., a
New Jersey Corporation,

Plaintiff,

v.

SOUTH COAST AUTO SALES,
INC., dba SOUTH COAST
SUBARU, a California Corporation;
TUAN PHAM aka TOMMY PHAM,
an individual, GORDON MIN, an
individual; and DOES 1 through 10,
Inclusive,

Defendants.

CASE NO.

[ASSIGNED FOR ALL PURPOSES TO
JUDGE _____]

COMPLAINT FOR:

- 1. BREACH OF CONTRACT**
- 2. BREACH OF THE COVENANT
OF GOOD FAITH AND FAIR
DEALING**
- 3. FRAUD**
- 4. INTENTIONAL
MISREPRESENTATION**
- 5. CONCEALMENT**
- 6. VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS
CODE SECTION 17200**
- 7. VIOLATION OF VEHICLE
CODE SECTION 11726**

DEMAND FOR JURY TRIAL

1 Plaintiff, SUBARU OF AMERICA, INC., a New Jersey Corporation,
2 (“SOA”) for its Complaint against Defendants SOUTH COAST AUTO SALES,
3 INC., dba SOUTH COAST SUBARU (“SOUTH COAST”), TUAN aka “Tommy”
4 PHAM (“PHAM”), GORDON MIN (“MIN”) and DOES 1 through 10 (collectively
5 “DEFENDANTS”), alleges as follows:

6 **NATURE OF THE ACTION**

7 1. In this action, SOA seeks monetary and injunctive relief for breach of
8 contract, breach of the covenant of good faith and fair dealing, fraud, intentional
9 misrepresentation, concealment, unfair and deceptive business practices, and
10 violations of the Vehicle Code under the laws of the State of California.

11 **THE PARTIES**

12 2. SOA is a corporation organized and existing under the laws of New
13 Jersey, with its principal place of business at 2235 Route 70 West, Cherry Hill,
14 New Jersey 08002-3308.

15 3. SOUTH COAST is a corporation organized and existing under the
16 laws of California, with its principal place of business at 2925 Harbor Blvd.,
17 Costa Mesa, California 92626.

18 4. PHAM and MIN are individuals, , on information and belief, residing
19 in Orange County, California and are or were employees of SOUTH COAST.

20 5. The true names and capacities, whether individual, corporate or
21 otherwise, of the defendants named herein as DOES 1 through 10, inclusive, are
22 presently unknown to SOA, which therefore sues these defendants by said fictitious
23 names. SOA will amend this complaint to allege these defendants’ true names and
24 capacities when they become known.

25 6. SOA is informed and believes, and thereon alleges, that, at all times
26 mentioned herein, each of the defendants named as DOES 1 through 10 have been
27
28

1 an officer, director, agent, employee or alter ego of the other defendants and in
2 doing the acts alleged herein has incurred liability to SOA.

3 **JURISDICTION AND VENUE**

4 7. This Court has original jurisdiction over this action under 28 U.S.C.
5 Sections 1332 and 1367(a) and based upon the principles of supplemental
6 jurisdiction. Jurisdiction over the causes of action exists because this action is
7 between citizens of different states and the amount in controversy exceeds the sum
8 of \$75,000, exclusive of interest and costs.

9 8. This Court has personal jurisdiction over the DEFENDANTS in that
10 DEFENDANTS are domiciled in this District and have committed the acts alleged
11 herein and caused injury, in this District.

12 9. Venue is proper in this Court pursuant to 28 U.S.C. Section 1391(b) in
13 that SOUTH COAST'S principal place of business and PHAM and MIN's
14 residences are located in this District and the events and/or omissions giving rise to
15 the claims hereinafter set forth occurred in this District.

16 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

17 10. SOA is engaged in the business of importing, distributing, and
18 advertising, new motor vehicles and related accessories and parts. SOA distributes
19 new Subaru vehicles to authorized dealers located throughout the United States for
20 sale to the public, and holds a license from the State of California to conduct this
21 business within the State. SOA has been engaged in the motor vehicle business in
22 the United States for over 46 years.

23 11. SOUTH COAST holds a dealer license from the California
24 Department of Motor Vehicles. Beginning in about 2002, SOA and SOUTH
25 COAST, doing business as South Coast Subaru, entered into a series of Subaru
26 Dealer Agreements and Standard Provisions, and letters extending the same, the
27 latest of which was entered into on or about November 1, 2010 (the "Dealer
28 Agreement"). The Dealer Agreement authorized, among other things, SOUTH

1 COAST to sell designated Subaru products at 2925-A Harbor Blvd. (“the
2 Dealership Premises”) in Costa Mesa, California. A true and correct copy of the
3 current Dealer Agreement is attached hereto as Exhibit “A.”

4 12. Under Sections 4.1 and 4.2 of the Dealer Agreement, SOUTH COAST
5 is required to maintain a high level of customer satisfaction with regard to the sales
6 experiences of SOUTH COAST’s Subaru customers.

7 13. On or about November 12, 2012 SOUTH COAST had not met its
8 contractual obligation to provide a sufficiently high level of customer satisfaction
9 for an extended period, and SOA issued a Notice of Requirement to Cure based, in
10 part, on SOUTH COAST’S poor customer satisfaction and poor customer handling
11 scores..

12 14. If a dealer fails to meet the cure obligations set forth in a Notice of
13 Requirement to Cure, SOA may take additional actions against the dealer, including
14 but not limited to, issuing a Notice of Termination of the Dealer Agreement.

15 15. During 2013, SOUTH COAST’s customer satisfaction performance
16 appeared to improve to a level that SOA took SOUTH COAST out of the cure
17 program relating to customer satisfaction.

18 16. In order to assess its authorized dealer’s performance with regard to
19 customer satisfaction, SOA has an Ownership Loyalty Program (“OLP”). OLP is
20 made part of the Dealer Agreement pursuant to Section 20.10 of the Dealer
21 Agreement, which incorporates the Subaru Owner Loyalty Program Reference
22 Guide by reference. SOA’s authorized dealers, including SOUTH COAST, receive
23 monthly OLP scores for both sales and service. These scores are based on the
24 results of surveys completed by the dealership’s customers.

25 17. Each SOA dealership is expected to collect a valid email address from
26 a customer at the time that a Subaru vehicle is purchased by that customer. These
27 email addresses are then shared with SOA for the purpose of distributing customer
28 surveys after a vehicle purchase and after the completion of service on the Subaru

1 vehicle. In addition, SOA uses these email addresses to communicate with
2 customers with regard to service reminders and other service related issues,
3 including potential vehicle recalls.

4 18. In addition to aiding in SOA's assessment of its dealerships'
5 compliance with their Dealer Agreements, OLP scores are also used to determine if
6 a dealership is eligible for recognition, including monetary rewards, under the
7 ASCENT and Stellar Care Awards programs.

8 19. The detailed information gained from these customer surveys provides
9 the dealership and SOA with specific areas in which a dealership may improve to
10 promote future sales of Subaru products and services and to aid in customer
11 retention.

12 20. On or about September 17 and 18, 2014, SOA conducted an
13 investigation at SOUTH COAST regarding SOUTH COAST's OLP scores and
14 customer surveys.

15 21. This investigation and the review of SOA's own records of surveys
16 allegedly provided by SOUTH COAST's customers showed that 224 supposed
17 customer surveys from 2014 alone had been generated from an IP address located at
18 South Coast Acura, another dealership owned by SOUTH COAST.

19 22. The investigation revealed that the buyer's orders and deal jackets
20 corresponding with the false surveys did not contain an email address for the buyer
21 or contained an email address that was not reported accurately to SOA. Sales of
22 those vehicles had been reported to SOA with sham email addresses, which caused
23 the surveys to be sent to email boxes controlled by SOUTH COAST.

24 23. PHAM and MIN, then sales managers at SOUTH COAST, reported
25 the sales of Subaru vehicles with these sham email addresses to SOA.

26 24. On information and belief, PHAM and MIN and DOES 1-10, acting on
27 behalf of SOUTH COAST, either directly submitted or directed others to submit
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1 surveys to SOA posing as Subaru customers on computers located at South Coast
2 Acura or Subaru buildings.

3 25. These surveys submitted by or on behalf of SOUTH COAST were
4 completed during a time of day normally associated with the dealership lunch hour
5 and were completed every few minutes, indicating that a person or persons with
6 SOUTH COAST were continuously completing surveys.

7 26. Additional information sought by SOA in conjunction with this
8 investigation has been withheld by SOUTH COAST and its employees, including
9 but not limited to, PHAM and MIN. SOUTH COAST has failed to detail any
10 meaningful plan to prevent this fraudulent behavior from continuing to occur.

11 27. SOUTH COAST has represented to SOA that the employment of
12 persons engaged in the submission of false surveys has been terminated. On
13 information and belief, however, PHAM and MIN both remain employed by
14 dealerships owned by SOUTH COAST, including South Coast Subaru.

15 28. As a result of these intentional and egregious acts of Defendants,
16 SOA's ability to monitor customer satisfaction for a significant amount of time has
17 been destroyed. In addition, SOA has incurred damages in the payment of bonuses,
18 the cost of investigation, and lost sales of vehicles and parts. SOA has also been
19 damaged by its inability to contact a number of consumers with service information
20 about their vehicles.

21 **FIRST CLAIM FOR RELIEF**

22 **(BREACH OF CONTRACT – AGAINST SOUTH COAST)**

23 29. SOA incorporates by reference Paragraphs 1 through 28 of this
24 Complaint as if fully set forth herein.

25 30. Under Section 5.1 of the Standard Provisions of the Dealer Agreement,
26 entitled Ethical Standards, the "Dealer agrees: . . . (b) to refrain from all conduct
27 which might be harmful to [the] reputations [of Subaru Products and of SOA,
28 among others] or to the marketing of Subaru Products, or which might be

1 inconsistent with the public interest; and . . . (d) not to engage in any unfair,
2 deceptive, misleading, unethical, discriminatory, fraudulent, illegal, or otherwise
3 prohibited practice.”

4 31. By submitting false, fraudulent and misleading email addresses and
5 customer surveys, SOUTH COAST has breached Section 5.1 of the Dealer
6 Agreement, thereby preventing SOA from contacting customers regarding service
7 issues and opportunities and from assessing those aspects of SOUTH COAST’s
8 interactions with retail customers that could be improved, both of which would
9 increase future sales and customer retention.

10 32. Similarly, SOUTH COAST has breached Section 4.2 of the Standard
11 Provisions of the Dealer Agreement, entitled “Customer Satisfaction
12 Responsibilities of Dealer” in failing to “advance the goals of customer
13 satisfaction,” failing to “keep [SOA] informed about customer complaints and
14 concerns” and failing to “use its best efforts to resolve customer satisfaction issues
15 in a fair and honest manner” by submitting fraudulent customer email addresses and
16 survey responses that prevented both SOUTH COAST and SOA from: knowing if
17 those customers had issues and concerns, attempting to resolve them and assessing
18 those aspects of SOUTH COAST’s interactions with retail customers that could be
19 improved, which would increase future sales and customer retention.

20 33. SOUTH COAST’s actions in submitting sham customer email
21 addresses and fraudulent surveys has violated Section 17.1.15 of the Dealer
22 Agreement that states that the Dealer Agreement may be terminated based on
23 SOUTH COAST’s transmission or submission of any report or form that is
24 “misleading, false, fraudulent, or materially inaccurate.”

25 34. SOA has complied with its obligations under the Dealer Agreement.

26 35. As a result of SOUTH COAST’s breaches of the Dealer Agreement as
27 alleged above, SOA has suffered harm in the form of monetary damage and injury
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1 to its business, reputation and goodwill, and will sustain loss of revenues and
2 profits.

3 36. SOUTH COAST has profited from its breaches of the Dealer
4 Agreement and has been unjustly enriched to the detriment of SOA. SOUTH
5 COAST's breaches have caused SOA monetary damage in an amount yet to be
6 determined.

7 **SECOND CLAIM FOR RELIEF**
8 **(BREACH OF THE COVENANT OF GOOD FAITH AND FAIR**
9 **DEALING –AGAINST SOUTH COAST)**

10 37. SOA incorporates by reference Paragraphs 1 through 36 of this
11 Complaint as if fully set forth herein.

12 38. SOA and South Coast are parties to the Dealer Agreement, which
13 specifically incorporates the Subaru Owner Loyalty Program Reference Guide
14 (“OLP Guide”). This OLP Guide sets forth how customer satisfaction data is
15 collected and results transmitted to Subaru dealers. A true and correct copy of the
16 OLP Guide is attached hereto as Exhibit “B.”

17 39. Implied in every agreement is a covenant of good faith and fair
18 dealing. Therefore, implied in the Dealer Agreement is an obligation on the part of
19 SOUTH COAST to act in good faith to permit SOA to receive the benefits of that
20 contract.

21 40. SOA has complied with its obligations under the Dealer Agreement.

22 41. No conditions existed to excuse SOUTH COAST's performance under
23 the Dealer Agreement.

24 42. SOUTH COAST's submission of sham email addresses and customer
25 surveys unfairly interfered with SOA's right to receive the benefits of the contract,
26 including interfering with SOA's ability to receive customer information and
27 accurately assess SOUTH COAST's performance under the contract and to
28

1 improve customer satisfaction and communication so as to improve future sales and
2 customer retention.

3 43. As a result of SOUTH COAST's breaches of the covenant of good
4 faith and fair dealing in the Dealer Agreement as alleged above, SOA has suffered
5 harm in the form of damage and injury to its business, reputation and goodwill, and
6 will sustain loss of revenues and profits.

7 44. SOUTH COAST has profited from its breaches of the covenant of
8 good faith and fair dealing and has been unjustly enriched to the detriment of SOA.
9 SOUTH COAST's breaches have caused SOA monetary damage in an amount yet
10 to be determined.

11 **THIRD CLAIM FOR RELIEF**
12 **(FRAUD – AGAINST ALL DEFENDANTS)**

13 45. SOA incorporates by reference Paragraphs 1 through 44 of this
14 Complaint as if fully set forth herein.

15 46. SOUTH COAST, PHAM, MIN and DOES 1 through 10 submitted
16 customer satisfaction surveys to SOA that stated that the those surveys were
17 completed by Subaru retail customers.

18 47. SOUTH COAST, PHAM, MIN and the DOE defendants submitted
19 email addresses to SOA that purported to be true email addresses of Subaru retail
20 customers.

21 48. The customer satisfaction surveys were not submitted by Subaru retail
22 customers, but rather by Defendants, and the email addresses submitted by
23 Defendants were sham addresses.

24 49. SOUTH COAST, PHAM, MIN and the DOE defendants knew that
25 their submissions to SOA were false and fraudulent at the time they were made.

26 50. SOUTH COAST, PHAM, MIN and the DOE defendants intended that
27 SOA would rely on these submissions to fraudulently avoid adverse actions by
28 SOA against SOUTH COAST and to improperly qualify for bonus payments.

1 51. SOA reasonably relied on SOUTH COAST, PHAM, MIN and the
2 DOE defendants' submissions.

3 52. As a result of these submissions and SOA's reliance thereon, SOA
4 incurred monetary damages in an amount to be determined at trial.

5 53. Defendants' actions were intentional and Defendants knew that their
6 actions would cause SOA to suffer substantial damages, in knowing disregard of
7 the lawfulness of their actions. This willful and malicious conduct entitles SOA to
8 a recovery of exemplary damages in an amount to be determined at trial.

9 **FOURTH CLAIM FOR RELIEF**
10 **(INTENTIONAL MISREPRESENTATION – AGAINST ALL**
11 **DEFENDANTS)**

12 54. SOA incorporates by reference Paragraphs 1 through 53 of this
13 Complaint as if fully set forth herein.

14 55. SOUTH COAST, PHAM, MIN and the DOE defendants submitted
15 customer satisfaction surveys to SOA that stated that the those surveys were
16 completed by Subaru retail customers.

17 56. SOUTH COAST, PHAM, MIN and the DOE defendants submitted
18 email addresses to SOA that purported to true email addresses of Subaru retail
19 customers.

20 57. The customer satisfaction surveys were not submitted by Subaru retail
21 customers, but rather by Defendants, and the email addresses submitted by
22 Defendants were sham addresses.

23 58. SOUTH COAST, PHAM, MIN and the DOE defendants knew that
24 their representations to SOA were false at the time they were made.

25 59. SOUTH COAST, PHAM, MIN and the DOE defendants intended that
26 SOA would rely on these misrepresentations to avoid adverse action buy SOA
27 against SOUTH COAST and to improperly qualify for bonus payments.
28

1 60. SOA reasonably relied on SOUTH COAST, PHAM, MIN and the
2 DOE defendants' representations.

3 61. As a result of these misrepresentations of defendants and each of them,
4 and SOA's justifiable reliance thereon, SOA incurred monetary damages in an
5 amount to be determined at trial.

6 62. Defendants' actions were intentional and Defendants knew that their
7 actions would cause SOA to suffer substantial damages, in knowing disregard of
8 the lawfulness of their actions. This willful and malicious conduct entitles SOA to
9 a recovery of exemplary damages in an amount to be determined at trial.

10 **FIFTH CLAIM FOR RELIEF**

11 **(CONCEALMENT – AGAINST ALL DEENDANTS)**

12 63. SOA incorporates by reference Paragraphs 1 through 62 of this
13 Complaint as if fully set forth herein.

14 64. SOUTH COAST, PHAM, MIN and DOES prevented SOA from
15 discovering the actual customer satisfaction level of Subaru retail customers at
16 South Coast Subaru by providing sham customer surveys to SOA.

17 65. SOA did not, does not and will likely never know the actual customer
18 satisfaction levels of Subaru retail customers at South Coast Subaru.

19 66. SOUTH COAST, PHAM, MIN and DOES intended to deceive SOA
20 by concealing those customer satisfaction levels.

21 67. If the concealed information been disclosed, SOA reasonably would
22 have behaved differently.

23 68. As a result of this concealment, SOA incurred monetary damages in an
24 amount to be determined at trial.

25 69. Defendants' actions were intentional and Defendants knew that their
26 actions would cause SOA to suffer substantial damages, in knowing disregard of
27 the lawfulness of their actions. This willful and malicious conduct entitles SOA to
28 a recovery of exemplary damages in an amount to be determined at trial.

SIXTH CLAIM FOR RELIEF
(UNFAIR COMPETITION IN VIOLATION OF CALIFORNIA BUSINESS
AND PROFESSIONS CODE SECTION 17200 – AGAINST ALL
DEFENDANTS)

70. SOA incorporates by reference Paragraphs 1 through 69 of this Complaint as if fully set forth herein.

71. Defendants have engaged in unlawful, unfair, dishonest, deceptive, false and misleading acts and business practices, in violation of California Business and Professions Code sections 17200, including by, among other things, submitting sham email address for Subaru retail customers to SOA and submitting fraudulent customer satisfaction surveys which purported to be submitted by Subaru retail customers.

72. SOA has no adequate remedy at law. As a result of Defendants' acts as alleged above, SOA has suffered and will continue to suffer irreparable harm in the form of damage and injury to its business, reputation and goodwill, and will sustain loss of revenues and profits, and will continue to do so unless and until Defendants are permanently restrained and enjoined by the Court from further violating SOA's rights.

73. Defendants have profited from their unlawful actions and have been unjustly enriched to the detriment of SOA. Defendants' unlawful actions have caused SOA monetary damage in an amount yet to be determined.

74. By reason of the acts of Defendants, SOA is entitled to restitution from Defendants of all income, gains, profits and advantages resulting from their wrongful conduct in an amount to be determined at trial.

SEVENTH CLAIM FOR RELIEF
(VIOLATION OF VEHICLE CODE SECTIONS 11705(A)(14) – AGAINST
ALL DEFENDANTS)

75. SOA incorporates by reference Paragraphs 1 through 74 of this

1 Complaint as if fully set forth herein.

2 76. SOA, a licensee of the California Department of Motor Vehicles
3 (“DMV”), is suffering pecuniary damage in an amount to be determined, as a result
4 of the willful failure of SOUTH COAST, PHAM and, and the DOE defendants,
5 who are also licensees of the DMV, to comply with Vehicle Code section
6 11705(a)(14).

7 77. Vehicle Code section 11705(a)(14) states that it is unlawful “to cause[]
8 any person to suffer any loss or damage by reason of any fraud or deceit practiced
9 on that person or fraudulent representations made to that person in the course of the
10 licensed activity.” The Defendants’ actions described above constitute fraud and
11 deceit perpetrated against SOA.

12 78. SOA is entitled to recover its damages, to obtain injunctive relief and
13 to recover its reasonable attorneys’ fees, from defendants and each of them,
14 pursuant to Vehicle Code section 11726.

15 79. Defendants’ actions were intentional and Defendants knew that their
16 actions would cause SOA to suffer substantial damages, in knowing disregard of
17 the lawfulness of their actions. This willful and malicious conduct entitles SOA to
18 a recovery of exemplary damages in an amount to be determined at trial.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, SUBARU OF AMERICA, INC. respectfully prays for
21 judgment as follows:

22 A. For an award of actual and exemplary damages and profits arising
23 from all Defendants’ fraudulent actions, pre- and post-judgment interest, and
24 SOA’s costs and attorneys’ fees associated with this action.

25 B. For restitution against all Defendants in an amount to be proven at trial
26 for unfair, fraudulent and illegal business practices under California Business and
27 Professions Code section 17200;
28

1 C. For monetary damages arising from SOUTH COAST's breach of the
2 Dealer Agreement in an amount to be proven at trial;

3 D. For a Permanent Injunction prohibiting SOUTH COAST or any of its
4 owners, employees, agents, contractors or representatives, including but not limited
5 to PHAM and MIN, from submitting sham, false or fraudulent Subaru customer
6 email addresses or customer surveys to SOA.

7 E. For such other and further relief as this Court deems to be reasonable,
8 necessary and just.

9
10 Dated: February 6, 2015

BAKER & HOSTETLER LLP
MAURICE SANCHEZ
LISA M. GIBSON

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12
13 /s/Maurice Sanchez
Maurice Sanchez
Attorneys for Plaintiff
14 SUBARU OF AMERICA, INC.

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16 **DEMAND FOR JURY TRIAL**

17 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff Subaru of
18 America, Inc. hereby demands a trial by jury of all issues so triable.

19
20 Dated: February 6, 2015

BAKER & HOSTETLER LLP
MAURICE SANCHEZ
LISA M. GIBSON

21
22
23 /s/Maurice Sanchez
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24 SUBARU OF AMERICA, INC.